

SPECIAL CIVIL APPLICATION No 6955 of 1998

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

2. To be referred to the Reporter or not? NO. @@

5. Whether it is to be circulated to the Civil Judge?
NO.

OWNER- SHRI RADHEY PROTIENS

STATE OF GUJARAT

M/S THAKKAR ASSOC. for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
SERVED BY RPAD - (R) for Respondent No. 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 14/12/98

C.A.V.JUDGMENT

1. This writ petition under Article 226 of the Constitution of India has been filed seeking writ of certiorari for quashing the detention order dated 6-8-98 passed by the District Magistrate, Valsad, under Section 3 (2) of the Prevention of Black Marketting & Maintenance & Supplies of Essential Commodities Act, 1980 (for short "the Act ") and for a writ of habeas corpus seeking immediate release of the petitioner from illegal detention.

2. The brief facts are that groundnut edible oil seeds which are called as pods are essential commodities declared under Part V of Section 2 of the Essential Commodities Act. The movement of groundnut oil seeds is regulated by separate order which inter-alia requires intimation by the licence holder to the competent authority 48 hours before his intention to move the pods outside the State of Gujarat. Petitioner is a licence holder dealing with groundnut oil-pods oilseeds grain and pulse in the name of Radhey Proteins under Gujarat Essential Commodities (Licensing, control and stock declaration) Order, 1981. Place of business has been specified. On 30-7-1998 inspection of oil seeds going outside the state of Gujarat was carried on at check-post and it was found that in Truck No.GQB 4353 stock of 10 tones of pods kept in 200 bags were loaded. Bill No.60 was prepared from M/s Shashi Traders. The driver gave his statement that the petitioner was the owner of the consignment. The consignment was to be transported to Bombay. Necessary papers were to be given to the driver subsequently. Upon cross-checking it was found that there was no firm like M/S Shashi Traders and the transport of pods was being carried out at a different place and bogus bill was prepared from M/s. Shashi Traders. Without submitting declaration and obtaining permission of the Competent Authority, the petitioner was found transporting pods to Bombay and as such he committed breach of clause 24 of the Gujarat Essential Commodities (Licencing, control and stock declaration) Order, 1981 and other irregularities were found. On 8-5-98 stock of 50 bags having 2000 kg pods was seized from the petitioner.Seizure proceeding continued. The stock was given in the custody of the petitioner with a direction to keep it and not to dispose of till disposal

of seizure proceeding. Ignoring the above direction, petitioner disposed of 50 bags of stock without taking permission from the competent authority. This was another breach committed by the petitioner. These two activities according to the detaining authority indicated that the petitioner was engaged in black marketing and was earning high profits by transporting pods outside Gujarat State. The detaining authority came to subjective decision that at a time when in Gujarat due to severe scarcity of groundnut oil and oil seed prices were going high, at that time the petitioner formed/organized conspiracy with an intention to earn high profit and he involved in the activities of black marketing. Considering that alternative remedy of cancellation of licence of the petitioner and his prosecution under the Essential Commodities Act could not be effective to prevent immediate crisis created due to such black marketing activities that the impugned order was passed. It is this order which is under challenge in this petition.

3. Learned counsel for the petitioner has assailed the impugned order on several grounds.

4. The first ground has been that the detaining authority has not properly considered the alternative efficacious remedy of cancellation of licence of the petitioner which has rendered the detention order illegal and invalid. It was also contended that the action under Section 12 AA of the Rules framed under the Essential Commodities Act were also not properly considered. On the factual side it is incorrect to say that alternative remedies were not considered by the detaining authority. At page 10 of the English translation of the grounds of detention it was indicated that the petitioner committed offences punishable under Section 7 of the Essential Commodities Act. At page 11, it is mentioned that with a purpose to prevent black marketing activities in future, the detaining authority made sufficient discussion regarding taking action by court i.e. prosecution by court under Section 12 AA of the Essential Commodities Act. Thus, the aspect of the prosecution was considered by the detaining authority. Since there was great crisis in groundnut oil at the relevant time in the entire state of Gujarat, naturally the prosecution of the petitioner could have been time taking affair and by prosecution illegal activities of the petitioner in indulging black marketing of pods could not be effectively prevented. Even if he would have been arrested and sent in judicial custody, he could have applied for bail and cancellation of bail would also have been ineffective remedy. Again

at page 14 of the English translation it is found that the detaining authority had considered that if licence of the petitioner is cancelled, then also he can continue his business unlawfully, transporting oil seeds. If the petitioner was conducting the business from a place, other than the place of the business notified in the licence, cancellation of licence could not have been effective remedy for the obvious reason that cancellation of licence would have effect only to the premises for which the licence was obtained. Since the petitioner was acting and operating from a place, other than the place of business shown in the licence, his activities could not be prevented by cancellation of licence. It is then difficult to accept the contention that alternative remedies were not considered. Cancellation of licence could have enabled the petitioner for obtaining stay order from court and the petitioner could have continue in his illegal activities. In the affidavit of the detaining authority also it is clear that alternative remedies were considered by him. It is then incorrect to say that the detaining authority did not consider properly the alternative remedies. If alternative remedies were considered by the detaining authority and he found it to be ineffective, this court cannot substitute its own views regarding subjective satisfaction of the detaining authority. Few unreported judgments were cited before me which are Special Civil Application No.2632 of 1998 and Special Civil Application No.2633 of 1998 decided on 15-7-98 , Special Civil Application No.5174 of 1997, decided on 15-10-97. These two decisions are distinguishable on facts. Reference was made to the judgment rendered by me in Special Civil Application No.6408 of 1998, decided on 6-11-98. This case is also distinguishable on facts because in this case the detaining authority did not mention that alternative remedies were considered and were found not efficacious. Two pronouncement of Division Bench of this Court rendered in case of Parshottambhai Navalram Khemani vs. State of Gujarat and another 26 (2) G.L.R. 620 and Ganeshbhai Gangabhai Harijan vs. District Magistrate, Banaskantha and others, 24 (2) G.L.R. were referred by me in the aforesaid Special Civil Application. The ratio of these cases is that even if alternative remedy is availbale, detention order could be passed. However, the court must satisfy that such possibility was present before the Detaining Authority. If there is no such satisfaction it amounts to non-application of mind and consequently the order of detention becomes illegal. It was further emphasized that the Detaining Authority must indicate that such possibility was taken into consideration. The Division Bench proceeded to observe

further that where alternative remedies or possibilities of preventing the petitioners were present, detention order could have been passed. Instead of launching a prosecution it might become necessary in certain cases to detain the detenu and that might be an efficacious way of preventing him from going with objectionable activities. However, the court must be satisfied that this possibility was very much present before the Detaining Authority and after taking into consideration and after knowing the pros and cons, the prognosis was arrived at. If this is not done, then clearly detention would be bad because it would be suffering from the vice of non-application of mind. Since in the case before me the Detaining Authority has considered the alternative remedies, the impugned order cannot be said to be invalid or illegal.

5. The next contention has been that the delay on the part of the Detaining Authority in forwarding the representation of the detenu to the State Government has also rendered the detention of the petitioner illegal. Reference was made to the counter affidavit of the Detaining Authority as well as of Shri R.R.Shukla, Deputy Secretary to the Government of Gujarat. Certain dates are relevant to appreciate this contention. The detention order was passed on 6-8-98. The State Government approved the detention order on 17-8-98 i.e. within 12 days of passing of the said order. Representation dated 18-8-98 was sent to the Detaining Authority by the advocate of the petitioner. In para 17 of the counter affidavit of the Detaining Authority it is mentioned that the representation of the petitioner dated 18-8-98 sent through advocate was received on 19-8-98 and in reply of his representation the petitioner has been informed in detail on 25-8-98. Neither the respondent nor the petitioner has filed the copy of reply dated 25-8-98. However, since the detention order was approved by the State Government on 17-8-98 and the representation dated 18-8-98 was sent and was received by the District Magistrate on 19-8-98, he become functus officio in dealing with such representation. Of course, from para 17 of the affidavit of the detaining authority it does not appear why the representation was not forwarded to the State Government. Para 4 of the counter affidavit of Shri P.R.Shukla shows that no representation dated 18-8-98 was received by the State Government from the District Magistrate. However, the representation dated 24-8-98 again made by the advocate of the detenu was received and it was dealt with and rejected on 10-9-98. The details of movement of representation are given in para 4 of this counter affidavit which show that the

representation was dealt with expeditiously. The detenu was informed of the Government decision vide letter dated 10-9-98. Thus, there was no delay on the part of the State Government in dealing with the representation dated 24-8-98.

6. Copy of representation dated 24-8-98 has not been brought on record. Copy of representation dated 18-8-98 is Annexure "D" to the writ petition. If copy of the representation dated 24-8-98 would have been brought on record, it could have been compared and could have been easily observed that some material facts were mentioned in the representation dated 18-8-98 which could not mentioned in the subsequent representation dated 24-8-98. If the two representations were identical and the later representation dated 24-8-98 was promptly rejected, non-forwarding of earlier representation by the District Magistrate and non-consideration of the said representation by the State Government has not rendered the detention order illegal. The case of Salim Pothiyu Rehmanbhai Belia vs. District Magistrate, Dist : Mehsana and others, 1994 (2) G.L.H. (U.J.) 11 is on a different point. It deals with the situation that the Detaining Authority has no power to revoke order of detention after it is confirmed by the State Government even though the representation is addressed to the detaining authority. The ratio of this case cannot be applied to the facts of the case before me. Here the detaining authority did not consider and rightly did not consider the representation dated 18-8-98, inasmuch as, the detention order passed by him was approved by the State Government a day earlier i.e. on 17-8-98. The only option before the District Magistrate was to forward this representation to the State Government. However, as observed this omission of the District Magistrate has not rendered the detention order invalid or illegal.

7. Another attack against the detention order has been that the representation dated 17-8-98 sent to the Central Government by the advocate of the petitioner was received in the concerned section on 18-8-98. But this representation has not been considered so far. From the counter affidavit of Shri Jatinderbir Singh, Director in the Department of Consumer Affairs, Ministry of Food & Consumer Affairs, New Delhi it is clear that representation dated 24-8-98 only was received in the concerned department and it was promptly dealt with. In another counter affidavit of Shri A.L.Makhijani, Under Secretary in the Department of Consumer Affairs, Ministry of Food & Consumer Affairs, New Delhi, it has been deposed that representation dated 17-8-98 was not

received in the concerned section of the Central Government. Learned counsel for the petitioner has drawn my attention to xerox copy Annexure "F" to the writ petition and argued that the representation dated 17-8-98 was delivered to the concerned section in the Ministry of Civil Supply, New Delhi on 18-8-98. He argued that in view of this, the counter affidavit to the contrary cannot be believed. There is however controversy as to how many representations were made and the dates of those representations. In the writ petition there is mention of representation dated 18-8-98 which was sent to the District Magistrate and also to the Central Government. There is no mention that any representation dated 17-8-98 was sent by the detenu to the Central Government directly. Annexure "D" on the other hand is representation dated 18-8-98. It is then difficult to understand how representation dated 18-8-98 could be sent by speed post to the Central Government on 17-8-98. Moreover, the petitioner has not filed copy of the representation dated 17-8-98. The representation dated 24-8-98 sent by the advocate of the detenu was received in the Central Government on 31-8-98. Parawise comments were called for from the State Government telegraphically on 31-8-98. Parawise comments were received in the concerned section on 21-9-98 and after considering the record, the representation was rejected on 22-9-98 and information was given to the Superintendent, Central Jail, Vadodara, on the same day with a direction to convey the same to the detenu. There was thus no delay on the part of the Central Government in dealing with the representation dated 24-8-98.

8. In para 4 of the counter affidavit of Shri P.R.Shukla, Under Secretary, Gujarat Government, it has been deposed that the representation dated 24-8-98 sent by the advocate of the petitioner was received on 5-9-98 which was rejected on 10-9-98. Parawise remarks on the said representation were forwarded to the Central Government vide letter dated 14-9-98 by speed post. Parawise comments were received by the Central Government on 21-9-98. Thus there has been no delay on the part of the State Government in forwarding representation to the Central Government.

9. Even if for a moment it is believed that there is satisfactory evidence that either representation dated 17-8-98 or 18-8-98 was received directly by the Central Government, it is to be seen what is the effect of its non-consideration. As mentioned earlier copy of representation dated 17-8-98 has not been filed. Copy of representation dated 18-8-98 is at Annexure "D", but copy

of representation dated 24-8-98 is again not on record. Consequently it cannot be compared whether the contents in the representation dated 17-8-98 or 18-8-98 were different from the contents of the subsequent representation dated 24-8-98. A question of consideration of successive representations was considered by this Court in *Bachhrajji Biharilal Pitaliya v. District Magistrate, Surat & Ors.* 1994 (1) G.L.R. 843. The view taken by the Division Bench in this case has been that there is no obligation on the authority to consider successive representations unless new facts and circumstances are brought to the notice of the authority or unless supervening and subsequent facts calling for revocation of order of detention are brought to the notice of the authority. Secondly, there is no constitutional obligation to consider subsequent request or representation for revocation with same speed and expedition which is expected of the authority while deciding the first representation, in discharging of constitutional obligation under Article 22 (5) of the Constitution of India.

10. Thus, from this Division Bench's pronouncement, it is clear that if the detenu makes successive representations, those representation are to be considered only when new facts are disclosed and not otherwise. Secondly such successive representations are not to be dealt with the same speed and expedition which is required of the authority in dealing with first representation.

11. The ratio of this case can be applied to the facts of the present case. Technically representation dated 17-8-98 or 18-8-98 cannot be subsequent representation. However, in the absence of copies of representations dated 17-8-98 and 24-8-98, it cannot be said that additional facts were mentioned in the earlier representation and only formal representation was made on 24-8-98 or on 18-8-98. If two or three representations were identical, rejection of representation dated 24-8-98 was sufficient compliance of the requirements of Article 22 (5) of the Constitution of India. Thus, on this ground also the impugned order cannot be set aside.

12. There is no merit in the contention that the representation dated 24-8-98 was sent by the advocate of the detenu. Unless the copy of the said representation was brought on record, no such contention can be accepted.

13. It was argued that there was delay on the part of

the State Government in sending parawise comments. This delay has been explained in the affidavit of Shri P.R.Shukla, Deputy Secretary to the Government of Gujarat. Delay was caused because parawise comments were required from the concerned department. In view of explanation of delay, it cannot be said that the impugned order has been rendered invalid.

14. No other point was raised. For the reasons given above, I find that the detention order does not suffer from any illegality and consequently requires no interference in this writ petition. The writ petition being without merit is liable to be dismissed and is hereby dismissed.

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